



Department of Justice
Canada

Ministère de la Justice
Canada

CCM#: 2016-014516
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For Information

MEMORANDUM TO THE DEPUTY MINISTER

Updating Justice Canada's *Policy on Gender Equality Analysis* (FOR INFORMATION)

SUMMARY

- To inform you of the Gender-Based Analysis Unit's (Policy Sector) intent to update Justice Canada's dated *Policy on Gender Equality Analysis* (Annex A), which was developed in 1997. The update will help ensure that Justice continues to meet the requirements outlined in Status of Women Canada's (SWC) Action Plan on GBA+ for federal departments, and will help the Department better respond to the Government's renewed commitment to GBA+.
- The policy update will require the GBA Unit to engage in consultations with key officials across the Department. These consultations will help ensure that the updated policy appropriately reflects a range of perspectives and continues to support ongoing efforts to develop and deliver policies, programs and legal services that are responsive to the diverse needs of Canadians.

BACKGROUND

In 1995, the Federal Government committed to the implementation of GBA in all departments/agencies as the first objective of the *Federal Plan for Gender Equality*. Following this commitment, Justice Canada was one of the first departments to develop and approve a policy on gender equality analysis in 1997.

Since 1997, Status of Women Canada (SWC) has made significant efforts in rebranding and broadening the concept of gender equality, which is now known as GBA "Plus" (GBA+). The new terminology, in use since 2011, serves to emphasize that GBA+ looks beyond gender and includes other diverse identity factors such as, socio-economic status, ethnicity and religion. By examining other factors, GBA+ helps policy-makers better understand the context of an initiative and the differential impacts – positive or negative – that it may have on individuals (e.g., women, men, transgender and others).

SWC's GBA+ Framework for federal departments (Annex B) identifies six elements, based on recognized best practices for the sustainable long-term use of GBA+ as part of an organization's core functions. Among these elements is the requirement for a Policy Statement, which needs to be clearly articulated to endorse GBA+ and provide a mandate to proceed with building supporting structures, policies, and activities.

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DISCUSSION

Justice's *Policy on Gender Equality Analysis* was developed nearly 20 years ago. It should be renewed to better reflect updated terminology (e.g., GBA+ and intersectionality), and remove dated information, documents and structures (e.g., network of Gender Equality Specialists). Further, given the current government's renewed commitment towards GBA+ (SWC Minister's mandate letter; Budget 2016, etc.), updating the policy would better position Justice to reiterate its leadership role in this area, and will maintain and enhance Justice's responsibility in the application of GBA+ to our work.

Other federal departments (e.g., INAC, CIC, ESDC, Health) have recently revised/renewed their GBA+ policy documents to go beyond gender equality and better reflect the diverse needs of individuals, and to acknowledge changes and other initiatives related GBA+ that are being advanced by SWC.

s.21(1)(a)

s.21(1)(b)

We expect to launch initial consultations over the summer and will continue to work with key officials across the department throughout the process.

RESOURCE IMPLICATIONS

N/A

COMMUNICATION IMPLICATIONS

The launch of the consultation process will be announced via JustInfo, JustMe and other internal communication tools to help ensure the new policy truly achieves a department-wide perspective.

CCM#: 2016-014516

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NEXT STEPS

s.21(1)(a)

s.21(1)(b)



Attachment(s)

Annex A – Justice Canada's 1997 *Policy on Gender Equality Analysis*

Annex B – SWC's Departmental Framework for GBA+

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CCM#: 2016-014516

Policy of the Department of Justice on Gender Equality Analysis

The 1997 DOJ Gender Equality Analysis Policy (below) was one of the first in the Federal Government. It outlines the DOJ's original commitment to the inclusion of gender considerations in our work. The GBA Unit will be updating and revising this Policy in the coming months.

What is gender equality analysis?

In the legal context, gender equality analysis is a process that assesses, from the earliest working stage, in all our functions, the differential impact on women and men of policies, programs, legislation or legal principles. This assessment is made through the consideration of gender differences, of the nature of relationships between women and men and of their different socio-economic circumstances, taking also into account compounding issues such as race, class, sexual orientation or disability.

The Terms....

SEX identifies the biological differences between women and men

GENDER is the culturally specific set of characteristics that identifies the social behaviours of women and men and the relationship between them. Gender, therefore, refers not simply to women or men, but to the relationship between them, and the way it is socially constructed. Because it is a relational term, gender must include women and men. Like the concepts of class, race and ethnicity, gender is an analytical tool for understanding social processes.

GENDER EQUITY is the process of being fair to women and men. To ensure fairness, measures must often be available to compensate for historical and social disadvantages that prevent women and men from otherwise operating on a level playing field. **Equity leads to equality.**

GENDER EQUALITY means that women and men enjoy the same status. Gender equality means that women and men have equal conditions for realising their full human rights and potential to contribute to national, political, economic, social and cultural development, and to benefit from the results.

Gender equality is therefore the equal valuing by society of both the similarities and differences between women and men, and the varying roles that they play.

From "**Gender-based Analysis: A guide for policy-making**", Status of Women Canada, p. 3

Why Gender Equality Analysis?

Gender equality remains a broad societal issue demanding a response. Because law should reflect and translate into norms the highest values of a society, it must integrate the pursuit of equality between women and men.

By adopting an official policy on the integration of gender equality analysis into all Department of Justice work, the Department formalises its commitment to ensuring that every Justice issue is analysed for its impact on gender equality.

The policy is consistent with the vision of the Department of Justice as an outstanding department of government and a leader in the national system of justice. The policy is also consistent with our mission, in particular our commitment to promoting respect for rights and freedoms. In addition, the policy reflects the commitment of our Department and the federal government stated in **The Federal Plan for Gender Equality**, approved by Cabinet in 1995 to implement gender equality analysis, particularly as regards objectives 1 and 8:

Objective 1: 'Implement Gender-based analysis, throughout Federal Departments and Agencies', puts forward a systematic process to inform and guide future legislation and policies at the federal level by assessing any potential differential impact on women and men. Hence, this objective underpins all subsequent objectives.

Objective 8: Advance gender equality for employees of federal departments and agencies.

p.ii

The fundamental purpose of gender equality analysis in the work of the Department of Justice is stated in the document entitled *Reorganisation of the Department of Justice*:

- to ensure that the needs of women in the justice system and the Department of Justice are taken into account in all of the Department's substantive work and management practices and policies;
- to embed awareness, responsibility and accountability for gender equality throughout the Department.

p. 30

Gender Equality analysis - Principles and guidelines

"...The accommodation of differences... is the essence of true equality..."

*Andrews v. Law Society of British Columbia
[1989] 1 S.C.R. 143 at 169 (McIntyre J.)*

Principles

Certain fundamental principles govern the application of gender equality analysis:

- gender equality can only be achieved by recognising the differential impact of norms or measures on women and men, according to their diverse life situations including other factors of diversity such as race, sexual orientation, disability and social class;
- gender equality analysis takes into account the historical and current social context creating inequality and seeks to redress such inequality;
- gender equality analysis is an integral part of the substantive analytical process and must be applied at every stage of this process;
- gender equality analysis focuses not only on the results but also on the concepts, arguments and language used in the work process;
- gender equality analysis must be free from prejudices and stereotypes in its basic assumptions as well as in approach and process;
- gender equality analysis must lead to remedies to inequality.

Guidelines

Gender equality analysis follows certain main steps that are common to all functions in the Department:

1. definition of the relevant facts and substantive issues at stake;
2. through an analysis of the relevant social context, consideration of the different socio-economic realities of women and men, as they are relevant to the issues at stake, through research or consultation within the Department, with client departments, academics or with external government and non-government organisations, particularly women's groups;

3. assessment of the actual impact of the measure at stake for women and men, according to the facts revealed in the social context analysis;
4. development of strategies to remedy inequality.

Our Policy

The Department of Justice policy on gender equality analysis requires that:

- Gender equality analysis be integrated in all work of the Department of Justice. This includes policy and program development, research, interpreting judgements, legal advice, drafting legislation and regulatory provisions, litigation instructions and strategies, resolving disputes, establishing management policies and consultations as well as communications plans.
- Specifically, each file shall be approached in a way cognizant of the different life situations of women and men and, where gender equality issues arise, solutions will be developed to prevent or remedy any inequality.

"Even in imposing generally applicable provisions, the government must take into account differences which in fact exist between individuals and so far as possible ensure that the provisions adopted will not have a greater impact on certain classes of persons due to irrelevant personal characteristics than on the public as a whole. In other words, to promote the objective of the more equal society, s.15(1) acts as a bar to the executive enacting provisions without taking into account their possible impact on already disadvantaged classes of persons".

*Rodriguez v. B.C. (Attorney General)
[1993] 3 S.C.R. 519 at 549 (Lamer, CJC)*

Putting our Policy to Work

1. The Department will ensure that all employees can recognise gender equality issues in all substantive work and seek remedies to inequality. To that end:
 - employees will be given professional development seminars in order to learn the steps involved in gender equality analysis, learn to identify relevant issues and conduct the analysis themselves or consult with the Gender Equality Specialists to do so;

- a guide on how to apply gender equality analysis to the substantive work of the Department will be available as a work tool; and
 - a network of Gender Equality Specialists has been established to serve as resource persons in order to identify gender equality issues that arise, whether in policy and program development, research, interpreting judgements, legal advice, drafting legislation or regulatory provisions, litigation instructions and strategies, resolving disputes, establishing management policies and consultations as well as communications plans.
2. The employees will contribute to the implementation of gender equality analysis. To that end:
- employees will make gender equality analysis an integral part of their substantive work, as relevant;
 - employees will identify gender equality issues as they arise and seek remedies to inequality or consult Gender Equality Specialists to do so;
 - any departure from the recommendations of a gender equality analysis will be explained in writing;
 - employees will attend professional development seminars on gender equality analysis relating to the substantive work of the Department;
 - managers will support and promote the work of Gender Equality Specialists linked to their centres of responsibility; and
 - managers will support and promote work by all employees aimed at addressing gender equality issues.
3. The Department will develop measures to monitor the application of gender equality analysis in the substantive work of the Department and its impact on the justice system. This will be done in co-operation with other government and non-government organisations, particularly women's groups.



GENDER-BASED ANALYSIS PLUS

THE GBA+ FRAMEWORK

A GUIDE TO BUILDING ORGANIZATIONAL CAPACITY FOR GENDER-BASED ANALYSIS+ (GBA+)

This guide is intended for use by federal government employees in the process of implementing gender-based analysis+ within federal departments and agencies.

The Government of Canada is committed to strengthening the use of gender-based analysis+ (GBA+) as a key tool for developing public policy and informing decision-making. Achieving concrete results using GBA+ is a shared responsibility between Status of Women Canada and federal departments and agencies. The Departmental Action Plan on GBA outlines expectations for federal organizations to develop their organizational capacity for GBA+, undertake self-assessments and report on their progress on an annual basis.



The GBA+ Framework

This document will guide you in the development of a departmental GBA+ framework. It consists of:

1. An overview of the components of a GBA+ framework
2. Advice on each of the six elements of the framework
3. Lessons learned and best practices from other federal departments and agencies in GBA+ framework development and implementation

A GBA+ framework consists of six core elements, all of which contribute to an organization's capacity to learn, apply and report on its GBA+ activities. These elements are necessary to implement and sustain the practice of GBA+ and can be adapted to any organization's needs and structure.

THE GBA+ FRAMEWORK

To implement and sustain the practice of GBA+

WHAT ARE THE CORE ELEMENTS OF A GBA+ FRAMEWORK?

The *Departmental Action Plan on Gender-Based Analysis* identifies six essential elements of a GBA + framework:

1. GBA+ **statement of intent** or policy;
2. **Responsibility centre** to monitor implementation of the framework and the practice of GBA+;
3. Mandatory GBA+ **training** for all senior officials, analysts and other appropriate staff;
4. Guides, manuals and other appropriate **tools** for promoting GBA+;
5. **Reporting** on progress in departmental *Reports on Plans and Priorities*, *Performance Reports* or other similar documents; and
6. Annual **self-assessments** on implementation of frameworks and practice of GBA+ on specific initiatives.



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GBA+ Framework - Key Lessons

- No single element is enough; all are necessary to achieve sustainability. For example, a statement of intent must be accompanied by tools and training that enable employees to understand and practice GBA+.
- To be effective and to maximize support from analysts and senior managers alike, your GBA+ framework needs to incorporate an accountability structure and relevant support mechanisms (e.g., GBA+ Champion, intra-departmental working group) to promote accountability.
- Creation of a framework ensures that responsibility for GBA+ extends across the entire organization and to all individuals, from the senior managers who endorse the policy or statement of intent to the experts who are best positioned to apply GBA+ to specific issues.

1. GBA+ STATEMENT OF INTENT

To communicate the organization's commitment to GBA+

The statement of intent is a clearly articulated commitment to GBA+, one that demonstrates senior management's will and effectively enables an organization's GBA+ capacity.

To ensure the statement of intent goes beyond the symbolic, the **other elements of the framework must also be implemented**. The implementation stage is often the most challenging as it requires that the organization gain a broad understanding of the benefits of using GBA+ when analysing and developing policies, programs and legislation, and involves teaching and learning new skills. It also requires effort to change long-standing work attitudes and methods.

A GBA+ statement of intent may be embedded in a GBA+ policy or it may stand alone. Regardless of the format, **the statement of intent should include the following elements:**

1. an organizational commitment to GBA+ as a mechanism to advance gender equality in Canada;
2. a statement of the need for GBA+, with emphasis on its relevance to the organization's work/issues;



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The GBA+ Framework

3. a clear indication of the organization's commitment to both implementing and sustaining the practice of GBA+; and
4. a requirement that GBA+ be a standard function of a systematic, integrative and evidence-based approach to developing and evaluating research, policies, programs and legislation.

Statement of Intent - Key Lessons

- In developing an organizational statement of intent for GBA+, it is valuable to involve a broad cross-section of employees from various functional roles, branches/sectors and levels. Organizations that have consulted widely on their GBA+ policies receive greater cooperation and agreement on the importance and relevance of GBA+ in their work.
- Departments and agencies with experience integrating GBA+ have found that a broader, over-arching statement of intent tends to be more enduring. Specific information and detailed advice can be contained in other, more flexible elements that can be updated as necessary.
- The statement of intent should be visible, available and communicated to all staff. Organizations should create a communication strategy to ensure all employees are aware of the statement of intent. Possible features of the strategy could include awareness events, communiqués from GBA+ Champions, DMs or ADMs, intranet postings).

2. RESPONSIBILITY CENTRE

To monitor implementation of the framework and practice of GBA+

MANDATE AND AUTHORITY

A GBA+ responsibility centre's mandate and authority may vary according to the GBA+ statement of intent and the resources accorded to such a centre, but its overall role is to **lead, enhance, support, and monitor implementation of a GBA+ framework and the actual practice of GBA+.** It could take on one or multiple roles, including:



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The GBA+ Framework

- **Facilitator** - enabling the practice of GBA+ throughout the organization; supporting implementation of other framework elements including drafting a statement of intent for senior management; supporting capacity development with training; creating and disseminating tools and guides; and coordinating GBA+ reporting and self-evaluation.
- **Convenor** - stimulating debate and discussion on the application of GBA+ in the organization and its role in advancing gender equality.
- **Expert** - providing GBA+ support to colleagues in their work. Accelerated GBA+ integration and enhanced accountability occurs when the responsibility centre is integrated into planning, development and decision-making processes.
- **Monitor** - monitoring implementation of GBA+ across the organization.

Responsibility for implementing GBA+ within departments and agencies rests not only with the GBA+ responsibility centre but with all employees, across all directorates, functional communities and levels of authority.

GOVERNANCE

The mandate and authority of the GBA+ responsibility centre should be clearly outlined. Ideally, it should have responsibility for leadership and a governance structure with the authority to review and advise on the organization's work with respect to gender equality.

Locating the responsibility centre in a strategic setting (e.g., strategic policy branch/directorate) and including it in policy and program development, implementation and decision-making can further assist in entrenching GBA+ within the organization's broader machinery.

The roles and responsibilities of the responsibility centre as well as those of senior management, employees and all other relevant players should be clearly defined.





The GBA+ Framework

SUPPORT MECHANISMS

Although not mandated in the *Action Plan*, support mechanisms – such as GBA+ champions and intra- and inter-departmental working groups – will enhance implementation of GBA+ throughout an organization.

- **GBA+ Champions** – Most useful at a DG or ADM level, their role is to increase awareness of the GBA+ policy or directive and can include overseeing integration of GBA+ into the organization's research, programs and policy development processes.
- **Intra-departmental (internal) working groups** – The role of this group is defined according to the needs of the organization but is generally to support the responsibility centre in implementing and evaluating GBA+ initiatives, to confer with inter-departmental working groups, and to promote and lead the application of GBA+ in their respective directorates.
- **Inter-departmental (external) working groups** – Government-wide GBA+ working groups promote networking and co-operation and offer support, guidance and resources for implementing GBA+ across departments and agencies. Currently these include a Status of Women Canada-led inter-departmental working group on GBA+; a GBA+ Community of Practice to encourage informal sharing of GBA+ learning, voluntarily hosted by participating departments; and various task-specific working groups (i.e., GBA+ training for specific work functions such as research).

Responsibility for GBA+ Implementation

- In addition to sharing responsibility for GBA+ among all employees, it is essential to maintain a well-resourced responsibility centre to enhance, support, expand and monitor accountability for the systematic application of GBA+.
- The GBA+ responsibility centre is a centre of expertise on GBA+ and can offer support for integrating its use across the organization.
- The responsibility centre requires sufficient financial and human resources to sustain the practice of GBA+.





The GBA+ Framework

3. GBA+ TRAINING

To increase GBA+ knowledge and capacity

The development of relevant resources, tools and training is a critical element in the implementation and sustainability of GBA+.

Training helps to transfer the practical knowledge required to implement GBA+ within an organization, and it prepares employees (not only for those within the responsibility center but for all employees) to apply GBA+ to their own work.

Status of Women Canada has a collection of valuable training materials and can assist you in developing and implementing a training program that meets the needs of the various audiences within your organization. For example, while some employees will require only general information about GBA+ implementation and accountability, others may need detailed instruction on applying GBA+ to policy development, research or evaluation.

Status of Women Canada has a network of trainers and resources to assist you. To discuss the development of your training program, **please contact us at gba-acs@swc-cfc.gc.ca**.

Training areas essential to the framework are:

- Senior Management Training - focused on high level analysis and accountabilities
- Introduction to GBA+ - basics of GBA+, federal accountabilities, tools, department-specific application of GBA+

Further training areas to consider:

- Function-specific training (i.e., for policy development, research, evaluation, communications, consultations, program delivery).
- Other training deemed important through a needs assessment.



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 The GBA+ Framework



Training - Key Lessons

- An awareness campaign that emphasizes departmental and individual responsibilities and accountabilities with respect to GBA+ can enhance enrolment in GBA+ training.
- Relevant case studies and success stories help to advance understanding and support for GBA+.

4. TOOLS

To increase GBA+ knowledge and capacity

'HOW TO' TOOLS

'How To' tools such as GBA+ guides, manuals and checklists provide invaluable information on all aspects of GBA+, and as such, a solid foundation for GBA+. Tools have the dual purpose of both promoting GBA+ and providing guidance in conducting GBA+. Although tools shared across the federal government are very useful, many organizations are now developing in-house tools to fit their particular environments and mandate.

GBA+ guides and manuals:

- often accompany a GBA+ training course but can serve as a stand-alone resource if developed accordingly;
- outline steps in developing or assessing policies and programs or in carrying out research;
- highlight questions that may be useful for the user, and encourage them to ask additional context-specific questions;
- contain important sources of information and background material.

GBA+ **checklists** are useful tools, particularly when beginning the practice of GBA+. They serve as reminders of what to include in a GBA+ and may be useful when preparing Memoranda to Cabinet and Treasury Board submissions.



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The GBA+ Framework

Status of Women Canada and other government organizations have prepared various tools and resources, and federal organizations are encouraged to share, collaborate and build on these existing resources. Some organizations may wish to adapt existing resources for their internal purposes or create context-specific 'how to' tools that resonate with their particular users.

GENDER AND DIVERSITY KNOWLEDGE RESOURCES

Organizations may find it useful to create fact sheets on key areas related to their area of responsibility and an annotated bibliography and/ or list of key resources. These can inspire employees to consider the place of gender and diversity in their own work.

There is a direct link between an organization's understanding of gender and diversity issues and the degree to which it succeeds in implementing GBA+.

KNOWLEDGE TRANSFER - SHARING GBA+ TOOLS AND RESOURCES

The sharing of information, promotional and educational activities and training opportunities helps to ensure a more profound knowledge of the concepts related to gender equality and of the process of GBA+.

Dissemination of GBA+ knowledge can be achieved through channels normally used to inform and meet the specific needs of an organization, either on a large or small scale. This can be accomplished, for example, by posting GBA+ -related information on your organization's intranet or internet sites, or by holding informal information sessions for employees.

Tools - Key Lessons

- The development of GBA+ tools requires dedicated financial and human resources.
- The sharing of GBA+ tools and resources amongst organizations enhances learning and reduces duplication.



The GBA+ Framework

5. REPORTING

To account for and communicate progress on GBA+ activities and practices

Departments and agencies are asked to report on their GBA+ activities and practices by:

- identifying their organization's GBA+ framework and its elements in its *Reports on Plans and Priorities* (RPP);
- reporting on implementation of the GBA+ framework in their *Departmental Performance Report* (DPR) or a similar instrument;
- reporting in the DPR, or a similar instrument, if differential gender impacts were identified in the development of policy/program outcomes;
- tracking the number of Memoranda to Cabinet and Treasury Board submissions to which GBA+ was applied or not applied;
- reporting in other similar documents, such as annual reports.

TREASURY BOARD SECRETARIAT GUIDANCE ON INCLUSION OF GBA+ IN REPORTS

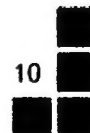
Due to the nature of the documents as well as the mixed-methodological nature of GBA+, the Treasury Board Secretariat does not have a template for inclusion of GBA+ in RPPs or DPRs.

Treasury Board advises that DPRs provide an opportunity for departments and agencies to report on program activities, progress, and successes. Ultimately, however, the choice lies with the organization as to the program elements and advancements they want to highlight within the document.

In some cases, departments will highlight short term accomplishments, long-term goals, improvements in official languages implementation or even gender equality issues that were addressed by a new program.



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The GBA+ Framework

It is here that TBS hopes to see organizations highlight their work on GBA+, when possible, to enhance our understanding of gender implications and to highlight progress on achieving gender equality.

REPORTING TO THE OFFICE OF THE AUDITOR GENERAL (OAG) AND PARLIAMENT

The Office of the Auditor General and the House of Commons Standing Committees on Public Accounts and on the Status of Women regularly ask departments and agencies to show how GBA+ informs their decision making.

Reporting - Key Lessons

- The Treasury Board Secretariat, Privy Council Office and Status of Women Canada encourage departments and agencies to draw public attention to their advancements in GBA+, both internal as well as external.
- Gender implications are vast and can be showcased in many different ways.

6. ANNUAL SELF-ASSESSMENTS

To assess progress on GBA+ framework implementation

A self-assessment of each organization's progress on implementing its GBA+ framework is to be submitted annually to Status of Women Canada.

The purpose of this document is to determine an organization's capacity to integrate and sustain the practice of GBA+.



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